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NO. _____

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

SEPTEMBER TERM, 1986

BURKE B. CARTER,

PETITIONER

V.

DORIS JEANNE PURYEAR,
NORFOLK AND WESTERN RWY CO.
AND THE BROTHERHOOD OF
RAILWAY AND AIRLINE CLERKS,
(BRAC)

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BURKE B. CARTER,

PETITIONER, PRO SE
710 OLNEY RD.
VINTON VA. 24179

28 pp's

BEST AVAILABLE COP

QUESTION PRESENTED FOR REVIEW

What is the applicable Federal Statute of limitations to apply under the Railway Labor Act, and at what time would it begin to run, as to:

a. an action by an employee against his employer for willful and deliberate breach of the contractual agreement.

b. and the joint action against his labor union (BRAC), for it's gross misconduct, and willful, arbitrary refusal to progress a meritorious grievance on behalf of the employee, through any of the contractual grievance procedures.

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Cases	Page(s)
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IN THE

SUPREME COURT OF THE UNITED STATES

SEPTEMBER TERM, 1986

No. 85-2026

BURKE B. CARTER,

PETITIONER

V.

DORIS JEANNE PURYEAR,
NORFOLK AND WESTERN RWY, CO.
AND THE BROTHERHOOD OF RAILWAY
AND AIRLINE CLERKS, (BRAC)

RESPONDENTS

PETITION FOR WRIT OF CERTORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The petitioner, Burke B. Carter respectfully prays that a writ of certiorari be issued to review the decision of the United States Court of Appeals for the Fourth Circuit, affirming, without opinion, the judgement of the United States District Court, that this civil action was not originally filed within the

applicable federal statute of limitations governing actions under the Railway Labor Act.

OPINION BELOW

The Court of Appeals entered it's decision on May 9, 1986, offering no opinion, refusing my request for oral argument, and affirming the judgement on "the reasoning of the District Court". The decision is stamped UNPUBLISHED, copy attached as appendix "A".

A timely filed petition for re-hearing and suggestion for re-hearing en banc was denied by the court of appeals on June 9, 1986, - copy attached as appendix "B".

JURISDICTION

On June 9, 1986, the court of appeals denied this petitioners request for a re-hearing en banc of their decision dated May 9, 1986, affirming the judgement of the District Court, that this civil action is barred by the applicable Federal Statute of Limitations.

The jurisdiction of this court is invoked

under Title 28 of the United States Code, section 1254, and also under Rule 17 (a), and (c) of the Supreme Court Rules.

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment V:

> (Nor shall any person be deprived of life liberty, or property, without due process of law.)

Also, the constitutional right that is mine to a trial by jury. I have been unlawfully deprived of that right by the unjust and prejudiced decision of the United States District Court for the Western District.

STATEMENT OF THE CASE

On February 22, 1985, I was forced to file a civil action in the United States District Court, in Roanoke, Va. The complaint is for libel, breech of contractual agreement, conspiracy, and misrepresentation, as applied to each respondent herein, due to their collective ruthless conduct in protecting a Norfolk & Western supervisor (Doris Jeanne Puryear), from being

prosecuted "on the property" for her conduct in bringing false charges against me and making malicious false statements about me in a formal investigation, held in October of 1983.

It is well documented and supported by evidence in the record, that this investigation was a vicious hoax perpetrated by Mrs. Puryear to ruin my character and reputation with the intent of having me fired.

Local BRAC officers and management, both had first hand knowledge that Mrs. Puryear's actions were a deliberate attempt by her, to have me harshly disciplined without cause.

Subsequent to the investigation, BRAC refused to pursue a greivence on my behalf against Puryear. My only alternative at that time, was to file a grievance myself, which I did.

I was then subjected to over a year of lies, threats, and open hostilities from all defendants, as I repeatedly pleaded for, but was denied proper recourse through the contractual

grievance procedures supported by the Railway Labor Act.

BRAC officials not only refused to help me at all in this grievance against Puryear, but instead actually worked covertly with management to insure that no resolution to my grievance would take place "on the property."

My lawful right to bring action, nor the merits of the action are in question in this petition. In the seven months that this complaint was on the docket with the U.S. District Court, the merits of the case were never mentioned or addressed in any way, any time by the Court. At no time during the seven months was a preliminary hearing of any kind conducted by the Court.

This original action was docketed in the United States District Court for the Western District, Roanoke, Va., on February 22, 1985, six days before the contractual limitations period in which to file a lawful action was due to expire.

On September 17, 1985, Chief District Court Judge James Turk ignored all merits and authorities of the pleadings, and granted summary judgement to all the named defendants, and time barred the complaint with the mis-application of the six month statute of limitations provided in Delcostello v. Teamsters 462 U.S. 151 (1983) copy of judgement attached as appendix "C".

The District Court denied a motion for reconsideration on October 18, 1985. Copy is attached as appendix "d".

A timely appeal was filed with the United States Court of Appeals for the Fourth Circuit, to reverse the District Court decision that has unjustly time barred this complaint.

The Court of Appeals denied the appeal without opinion, and stamped it UNPUBLISHED on May 9, 1986. - appendix "A"

The petition for re-hearing en banc was denied by the Court of Appeals on June 9, 1986, see appendix "B".

REASON FOR GRANTING THE WRIT

Pursuant to Rule 17 of the Supreme Court Rules as a basis for asking for a writ of certiorari, there is no doubt that the District Court Judgement (appendix "C") time barring this action is in conflict with, and is a complete contradiction to the proper use of the six month Federal Statute of Limitations provided by Sisco v. Consolidated Rail Corporation 732 F. 2d 1188 (3d cir. 1984), and Delcostello v. Teamsters, 462 U.S. 151 (1983)

Sisco v. Consolidated Rail Corp. provides a clear decision of how the six month statute of Delcostello v. Teamsters would be borrowed to apply to duty of fair representation cases under the Railway Labor Act. It provides that a Federal limitations period for these type of actions cannot begin to run until the contractual limitations period, as defined in the collective bargaining agreement to bring an action before an arbitration board, expires. (the contractual time limit in this action is February

28, 1985, as is well documented in the record.

Sisco v. Conrail also provides that the trial court must take evidence on the conduct of the union, to determine if the union discriminated or acted arbitrarily in failing to progress the claim during this contractual limitations period.

The case record will show that repeated requests for the District Court to take such evidence were ignored by Chief District Judge, James Turk. Had the court properly done so, it would have revealed the union's and managements conduct during this time to be nothing but disgraceful.

The District Court opinion uses Benson v. General Motors Corp. 716 F. 2d 862 (11th cir. 1983) as a precedent in holding that the six month statute began to run on the day of the investigation on October 27, 1983, because it was then that I became aware of the position of the defendants Puryear, the Company, and the union., stating that in Benson v. Gen. Motors,

the six month statute begins to run when the plaintiff became aware, or should have become aware of the alleged breach.(this opinion is taken directly from the defendants pleadings)

This could never apply under the Railway Labor Act, because no grievance against the union or management has ever been concluded in six months. The employees Federal right to bring action would expire every time, while he was being strung along through the grievance channels by the union and management alike, as I have been. Benson v. General Motors has no connection at all as to what statute of limitations applies to actions under the Railway Labor Act, however, in this case, Chief Judge Turk ignored the proper law and deliberately used Benson v. General Motors to fabricate a statute of limitations that is unlawful, unjust, and grossly prejudiced in favor of the defendants, Norfolk and Western Rwy, Puryear, and BRAC.

What has happened to me has happened to other Norfolk and Western employees in Roanoke, and will continue to happen to anyone with a similar grievance in the future, until something is done to make this corrupt local union (BRAC) represent it's members honestly and fairly, without prejudice, as they are paid to do.

A member of the Brotherhood of Railway and Airline Clerks Union (BRAC) cannot go directly to outside help to resolve a grievance. They must rely on BRAC as their only immediate recourse, and this instant case would have proven that the BRAC officials in Roanoke, Va. are dishonest, corrupt, and detramental to what a labor union is supposed to be to it's members.

I ask this Court to plesse justly review the question of when the six month Federal Statute should begin to run. This District Court decision, that has been affirmed by the Fourth Circuit Court of Appeals, is an absolute contradiction to the decision of the Third Circuit Court of Appeals in Sisco v. Conrail.

If the Fourth Circuit decision is not to be reversed by this Court, then this decision should be published as a precedent and made public, and not to be filed as "UNPUBLISHED", which is it's status at this time. Appendix "A".

A FINAL NOTE

> The District Court judgement opinion alludes to a request of BRAC to release a claim to me for all further handling. The case record will show that this mentioned claim is not the basis for this action, but the court's opinion has deliberately made it appear as such.
>
> Case exibits "C" and "E" are the grievances of record that BRAC refused to progress for me, and are the basis for this action.

CONCLUSION

For the foregoing reasons, I, Burke B. Carter, petitioner, pro se, respectfully request that a writ of certiorari be issued to review the judgement of the United States District Court for the Western District, affirmed by the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

Burke

Burke B. Carter
Petitioner - pro se
710 Olney Rd.
Vinton, Va. 24179

Note: The original writ of certiorari was notarized and mailed to this Court on Sept. 8, 1986. It was submitted on legal sized paper.

This is an amended re-submitted copy of the original writ, submitted in booklet form, to comply with the rules of the Court (Rule 33 .7)

IN THE

SUPREME COURT OF THE UNITED STATES

SEPTEMBER TERM 1986

BURKE B. CARTER

PETITIONER

V.

DORIS JEANNE PURYEAR, ET AL,

RESPONDENTS

CERTIFICATE OF MAILING

I, Burke B. Carter, Petitioner, do hereby certify that a true and complete copy of this petition for writ of certiorari, to the Court of Appeals for the Fourth Circuit was mailed first class to council for the respondents named above.

Burke B. Carter

Burke B Carter

Subscribed and sworn to, on the 7th day of September, 1986, before Carolyn S. Rose, Notary Public for the County of Roanoke, State of Va.

** The original certificate of mailing is with the original writ of certiorari, which was timely mailed to this court on September 8, 1986, notarized on that date by the above named notary.

APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

NO. 85-2026

Burke B. Carter,

Appellant,

versus

Doris Jeanne Puryear,
Norfolk and Western Railway Co.,
Brotherhood of Railway, Airline
and Steamship Clerks, Freight
Handlers, Express and Station
Employees,

Appellees.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke James C. Turk, District Judge (C/A No. 85-178-R)

Decided May 9, 1986, before Widner, Hall, and Sprouse, Circuit Judges.

(Burke B. Carter, Appellant Pro Se. William B. Poff, Bayard E. Harris and W. Fain Rutherford, Woods, Rogers and Hazlegrove, and William J. Birney, Highsaw and Mahoney, P.C. for Appellees.

PER CURIAM:

A review of the record and the District Court's opinion discloses that this appeal from that court's order denying relief under 45 U.S. C. 151 et seq. is without merit. * Because the dispositive issues recently have been decided authoritatively, we dispense with oral argument

and affirm the judgement below on the reasoning of the District Court. Carter v. Puryear, C/A No. 85-178-R (W.D. Va., Sept. 17, 1985).

AFFIRMED

---

*The District Court did not abuse its discretion in denying appellant's post judgement motion. United States v. Williams, 674 F. 2d 310, 312-13 (4th Cir. 1982).

Appendix A

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED

June 9, 1986

No. 85-2026

Burke B. Carter,

Appellant,

versus

Doris Jeanne Puryear, et al.

Appellees.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. James C. Turk, District Judge.

The appellant's pro se petition for rehearing and suggestion for rehearing en banc were submitted to this Court.

As the panel considered the petition for rehearing and is of the opinion that it should be denied.

It is ordered that the petition for rehearing and suggestion for rehearing en banc are denied.

Entered at the direction of Judge Sprouse, with the concurrence of Judge Widner and Hall.

For the Court

Appendix B

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF VIRGINIA

ROANOKE DIVISION

BURKE B. CARTER, PLAINTIFF, V.	)	CIVIL ACTION NO. 85-0178
DORIS JEANNE PURYEAR, NORFOLK AND WESTERN RWY CO. AND THE BROTHERHOOD OF RAILWAY AND AIRLINE CLERKS, DEFENDANTS.	)	FINAL JUDGEMENT AND ORDER By: James C. Turk Chief Dist. Judge

In accordance with the memorandum opinion filed this day, it is hereby:

ADJUDGED AND ORDERED

That the defendants motions for summary judgement shall be and are hereby granted.

The Clerk of Court is directed to strike this case from the court's active docket and to send certified copies of this order and the accompanying memorandum opinion to the plaintiff and to council for the defendants.

ENTER: This 17th day of September, 1985

James C. Turk

Chief U. S. District Judge

Appendix C

Civil Action No. 85-0178

MEMORANDUM OPINION

This case is presently before the court on the motions for summary judgement filed by each defendant. Jurisdiction is invoked pursuant to the Railwey Labor Act, 45 U.S.C. 151 et seq. The parties have submitted briefs and affidavits and the matter is now ripe for a decision by the court.

In his complaint, the plaintiff refers to defamation, libel, conspiracy, and misrepresentation. These state claims, however, are discussed in terms of violations of the collective bargaining agreement by the company and its agent, Ms. Puryear, and breach of duty of fair representation by the defendant union.

Therefore, this breach of collective bargaining agreement/ duty of fair representation allegation is the only cause of action over which this court has subject matter jurisdiction. In that there is no diversity of citizenship among the parties, any state claims should be

brought, if at all, in the appropriate State Court.

The United States Supreme Court in Del-Costello v. International Brotherhood of Teamsters 462 U.S. 151 (1983) held that the six month statute of limitation set forth in the National Labor Relations Act was applicable to such a hybrid suit by a union member against his employer for alleged breach of the collective bargaining agreements, and against his union for alleged breach of duty of fair representation. Several courts have held that the Del-Costello rule applies to claims arising under the Railway Labor Act. See, e.g., Sisco v. Consolidated Rail Corporation, 732 F. 2d 1188 (3d Cir. 1984). The court finds that Delcostello is applicable to the case at bar.

This six month statute of limitations begins to run when the plaintiff became aware or should have become aware of the alleged breach. See Benson v. General Motors Corporation, 716 F. 2d 862 (11th Cir. 1983). The

claims set forth in the complaint arise out of a hearing conducted on October 27, 1983. It was at this time that the plaintiff became aware of the position of the company and of the defendant Puryear. It was also at this time that the plaintiff became aware of the defendant union, in that one of the plaintiff's allegations is that the BRAC local chairman refused to testify on his behalf at that hearing. On August 2, 1984, the plaintiff wrote a letter to the union instructing BRAC to no longer process his claim and to release the appeal back to him for all further proceedings. Therefore, the plaintiff will not be heard to complain that the union failed to properly represent him in this matter at any time after this August 2, letter. Even assuming this later date for purposes of accrual the filing of the complaint on February 22, 1985 was outside the six month statute of limitations of Delcostello.

Plaintiff attempts to bring his complaint within the six month statute through two letters written in December, 1984. On December 3, 1984,

the plaintiff wrote to the union requesting that BRAC again assume responsibility for his case. On December 17, 1984, the General Chairman of the union informed the plaintiff by letter that the file had been reviewed and the claim again determined to be meritless. These letters do not toll the statute of limitations or begin it anew. BRAC's letter simply repeated that, in it's view the plaintiff's claim was without merit. As stated by the seventh circuit in Dozier v. Trans World Airlines, Inc., 760 F. 2d 849 (7thCir. 1985):

> (While the union continued to respond to plaintiff's requests for a hearing before the board, courtesy it extended him should not be sufficient to toll the statute. Otherwise, a plaintiff could indefinitely delay resolution of labor disputes merely by bombarding his union with tiresome requests for needless review. This defeats the Congressional policy of rapid resolution of labor disputes behind the Railway Labor Act. 45 U.S.C. 151a. See United Parcel Service, 451 U.S. at 63, 101 S. Ct. 1564.

This rationale equally applies to the case at bar.

The court finds that the complaint was not

filed within the six month time limit of Del-Costello. Therefore, the motion for summary judgement filed by each defendant should be GRANTED. A final judgement and order consistent with this memorandum opinion shall be entered this day.

DATED: This 17th day of September, 1985

James C. Turk
Chief U.S. District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF VIRGINIA

ROANOKE DIVISION

BURKE B. CARTER PLAINTIFF, V.	)	Civil Action No. 85-0178
DORIS JEANNE PURYEAR ET AL) DEFENDANTS	)	O R D E R By: James C. Turk Chief U.S. District Judge.

Following a hearing in this matter and for the reasons stated in the memorandum opinion dated September 17, 1985, it is hereby

O R D E R E D

That the plaintiff's motion for Reconsideration shall be and hereby is DENIED.

The Clerk of Court is directed to strike this case from the docket of the court and to send certified copies of this order to the Plaintiff and to counsel for the defendants.

ENTER: This 18th day of October, 1985.

James C. Turk

Chief U.S. District Judge

Appendix D

IN THE

SUPREME COURT OF THE UNITED STATES

SEPTEMBER TERM 1986

BURKE B. CARTER,

PETITIONER

v.

DORIS JEANNE PURYEAR et al,

RESPONDENTS

AFFIDAVIT UNDER RULE 28.2

I, John H. Kennett, Jr., am a member of the Bar of the Supreme Court of the United States; that I have reviewed the petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit filed by Burke B. Carter acting *pro se*; that included in this review is the observation of the original petition in improper form; that included in this review is the observation of the receipt for certified mail dated September 8, 1986 and the return receipt certificate stating the petition was received by the Clerk of

the Supreme Court of the United States on September 12, 1986; and that based on this scrutiny, to the best of my knowledge, information and belief, the petition for writ of certiorari was timely deposited in the United States certified mail with first class postage prepaid, and properly addressed to the Clerk of the Supreme Court of the United States. In making this certification, the undersigned is not becoming counsel of record for Mr. Carter.

John H. Kennett, Jr.
133 Kirk Avenue, Southwest
Roanoke, Virginia

STATE OF VIRGINIA,

CITY OF ROANOKE, TO-WIT:

Subscribed and sworn to before me by John H. Kennett, Jr. on this 13th day of March, 1987.

My commission expires: 9-30-88

Notary Public